

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Petition for Rulemaking of the |) | RM-11287 |
| Amherst Alliance of Michigan, et al., |) | |
| to Establish a Low Power AM Radio Service |) | |

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

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Dated: November 21, 2005

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SUMMARY

NAB respectfully submits these comments in opposition to the Petition for Rulemaking filed by the Amherst Alliance of Michigan, et al., in which the Petitioners request that the Commission establish a low power service in the AM frequency band (“LPAM”).

As an initial matter, NAB notes that the LPAM Petition fails to illustrate how the proposed service is technically feasible. Only five years ago, during the low power FM (“LPFM”) proceeding, the Commission specifically rejected pleas to authorize low power service also in the AM band because the propagation characteristics of the AM band make it a “poor choice” for introduction of an additional service. The Petition provides no data or analysis to explain why LPAM is any more technically feasible now than it was five years ago. Nor does the Petition offer any justification that LPAM is any more warranted now than it was five years ago. In short, it provides no basis upon which the agency should reverse its course. Rather, the LPAM Petition represents little more than a new “bite at the apple” that the Commission should dismiss.

NAB further submits that the LPAM Petition threatens to undermine the Commission’s efforts to clean up and improve the AM band. The Commission has recognized that channel congestion and interference create problems for AM radio service, and it has moved aggressively to create policy incentives and revise its technical rules (including the creation of the AM expanded band) designed to enhance AM service. The Petitioners’ request to introduce low power stations in the AM band runs directly counter to this long-term effort of the Commission. In particular, NAB demonstrates that LPAM stations are unwarranted because full power AM stations already provide vast amounts of coverage of local news and cultural events, and other

community-responsive programming, as a matter of survival in the intensely competitive media market.

Finally, the Commission must keep in mind the rapidly increasing competition that AM radio faces from satellite radio services and Internet streaming, to say nothing of competition from other radio stations, television stations, cable and satellite video providers, DVRs, and video games. Anything that might compromise the service quality of AM stations of course will hinder AM broadcasters' ability to respond to these competitive threats. Moreover, it would be particularly unwise to explore LPAM at this moment in time, when the transition to digital radio is just getting underway. Interference created by additional stations in the AM band, even low power stations, has the potential to delay, if not, cripple the digital transition by forcing receive manufacturers to reconsider product development.

For these reasons, NAB respectfully requests that the Commission dismiss the LPAM Petition.

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Pursuant to Section 1.405 of the Commission’s rules, the National Association of Broadcasters (“NAB”)¹ submits these comments on the above-captioned Petition for Rulemaking.² Petitioners propose criteria and principles for the establishment of a low power radio service in the AM band (“LPAM”).

As discussed below, NAB is concerned that LPAM is not technically feasible in a manner that would afford sufficient protection from interference to neighboring full power AM radio stations. In fact, introducing a low power radio service in the AM band would undermine the Commission’s efforts to improve the AM band, and impede AM stations’ ability to respond to increasing competition. Such a result would be contrary to the public interest since AM stations provide vast amounts of community responsive programming – a service that could be harmed if LPAM were to cause new interference in the band. Accordingly, NAB respectfully requests that the Commission dismiss the Petition.

¹ NAB is a nonprofit incorporated association of radio and television stations and broadcast networks. NAB serves and represents the American broadcasting industry.

² See Public Notice, *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Report No. 2735 (Oct. 21, 2005); Petition for Rulemaking, The Amherst Alliance of Michigan, the Michigan Music is World Class! Campaign of Michigan, the LPAM Network of Maine, Nickolaus E. Leggett N3NL of Virginia, and Don Schellhardt, Esq. (“Petitioners”) (filed Aug. 19, 2005) (“Petition” or the “LPAM Petition”).

I. The Petition Does Not Provide Sufficient Evidence to Overcome the Commission’s Recent Rejection of LPAM

Only five years ago, during its review of whether to authorize operation of a low power FM service (LPFM), the Commission specifically considered establishing low power radio service also in the AM band.³ Despite entreaties from several parties, the Commission decided to add low power radio services only in the FM band, stating that the interference potential and congestion in the AM band made it a “poor choice” for an additional radio service.⁴ Many AM radio stations already suffered from substantial interference and distorted reception, and the Commission predicted that introducing low power stations in the AM band would only worsen these problems. Specifically, the Commission noted that “the propagation characteristics of AM signals could exacerbate the interference potential of LPAM stations,” thereby causing signals to unfavorably extend long distances, particularly at night. *LPFM Notice* at 2478. For instance, during daylight hours a local AM radio station may only cover 20-30 miles with a good quality signal. However after sunset, the signal from the same station could propagate out several hundred miles.

It is for this reason that most AM stations must reduce their power levels during nighttime hours, or switch to a directional antenna system in order to reduce interference to other stations on the same or adjacent frequencies. Stations that are not able to take advantage of power reduction or directional signal patterns must sign off at local sunset and remain off the air until local sunrise. Only stations that operate on “clear channels” may remain on the air without the need to reduce power or operate directionally.

³ *Creation of Low Power Radio Service, Notice of Proposed Rulemaking*, MM Docket No. 99-25, 14 FCC Rcd 2471, 2478-79 (1999) (“*LPFM Notice*”).

⁴ *Id.* at 2478 *citing* Petition for Rulemaking filed by Trident Media and Broadcasting, Ltd.

AM radio signals propagate long distances at night because of the natural heating and cooling of the atmosphere by the sun. This process causes ionized layers of the atmosphere to vary drastically in density and in height above the earth. During daylight hours the very dense ionization absorbs most signals in the AM band, limiting a station's coverage to its groundwave signal. At night, these ionized layers of the atmosphere act like a mirror, reflecting radio signals on AM frequencies that strike them. As the ionized layers change with the cooling of the atmosphere at night, the reflected signals fall to earth at farther distances, typically far outside AM radio stations' local service areas. As a result, the potential for significant interference to AM stations at a distance is enhanced, even from AM stations operating at very low power levels. It was largely because of this unique interference issue that the Commission declined to introduce low power stations into the AM band.⁵

The Petition presents no evidence that LPAM is any more technically feasible now than in 2000.⁶ The LPAM Petition at hand proposes a host of rules for who should be allowed to own an LPAM station, how many stations one person or entity could own, and whether LPAM should be a commercial service,⁷ but fails to illustrate exactly how its proposal might clear the technical hurdles described above.

⁵ *Id.* After review of the voluminous record submitted in response to the *LPFM Notice*, the Commission reaffirmed this view in the *Order* implementing low power FM service. *Creation of Low Power Radio Service, Report and Order*, MM Docket No. 99-25, 15 FCC Rcd 2205, 2228 (2000) ("*LPFM Order*").

⁶ Indeed, the LPAM Petition largely repeats an earlier petition for rulemaking filed in June 2003 by Frederick M. Baumgartner. Petition for Rulemaking, Frederick M. Baumgartner, RM-10803 (filed June 2003) ("Baumgartner Petition"). The Commission never placed that Petition on Public Notice for comment, presumably because it did not offer any arguments or analysis sufficient to overcome the Commission's then three-year-old rejection of LPAM.

⁷ NAB also notes that Petitioners' request for an exemption from the statutory mandate that all commercial radio licenses be subject to auction would apparently be beyond the scope of the Commission's authority. 47 U.S.C. § 309(j). Section 309(j) states that if the Commission accepts mutually exclusive applications for "any initial license or construction permit, then . . . the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding." The Commission has interpreted this provision as mandatory, and has specifically determined that Congress did not intend to limit application of this mandate to full power radio broadcast stations, noting legislative

In fact, the LPAM Petition proposes liberal technical parameters in the name of administrative simplicity, but never touches on whether its proposal actually would work without corrupting the entire AM band. As such, NAB submits that Petitioners do not provide an adequate technical analysis of how their proposal would enable LPAM operations without causing harmful interference to existing broadcast services. Following the Commission's rejection of LPAM in the LPFM proceeding, the current LPAM Petition represents little more than another "bite at the apple." The Petition fails to illustrate any change in circumstances or advances in technology that warrant a different result.

Of course, it is axiomatic that all Commission actions must be supported by an adequate factual record.⁸ Moreover, an even higher burden of proof attaches when, as here, the Commission is urged to change or reverse course from a previously established determination. Specifically, judicial precedent dictates that an agency changing course in such a manner "is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance."⁹ The Petition does not come close to providing the Commission with any such information or policy justification. Accordingly, the Commission should reject the Petition.

history listing examples of secondary services also subject to auctions, including low power television and television translators. *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, MM Docket No. 97-234, 13 FCC Rcd 15920, 15924 (1998).

⁸ See, e.g., *Bechtel v. FCC*, 10 F.3d 875, 880 (D.C. Cir. 1993).

⁹ *Motor Vehicles Manufacturers Ass'n of the U.S., Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983).

II. LPAM Would Undermine the Commission’s Long-Term Efforts to Clean Up the AM Band

NAB further submits that the LPAM Petition would undermine the Commission’s multi-year effort to clean up and improve the AM band.¹⁰ As the Commission has recognized, since the 1960’s channel congestion and interference has created problems for AM radio, causing some listeners to shift their allegiances to newer media services. In the *AM Improvement Notice*, the Commission lamented that the AM band at the time was “densely populated with stations having wide variations in power, spacing, antenna patterns and protection from interference.” *Id.* at 4383. The Commission also noted other problems such as skywave interference, irregular coverage, irregular operating hours, poor receivers and interference from natural and electrical devices. *Id.* The Commission thus undertook to “transform and revitalize” the AM broadcast service, launching no fewer than six separate rulemaking proceedings, all designed to improve AM radio’s technical rules by reducing density and interference in the band. *Id.* Among other enhancements, this comprehensive plan focused on ways to more accurately measure skywave and groundwave strength, expand daytime and nighttime interference protections of AM stations, and increase protections from adjacent channel interference, all as a means to achieving an overall improvement in AM service.¹¹

Most significantly, the Commission’s “master plan” for improving AM service led to the creation of the AM expanded band (1605-1705 kHz). *Id.* at 4388. When identifying potential candidates for migration to the expanded band, the Commission

¹⁰ See *Review of the Technical Assignment Criteria for the AM Broadcast Service, Notice of Proposed Rulemaking*, MM Docket No. 87-267, 5 FCC Rcd 4381 (1990) (“*AM Improvement Notice*”).

¹¹ See, e.g., *Review of the Technical Assignment Criteria for the AM Broadcast Service, Report and Order*, MM Docket No. 87-267, 6 FCC Rcd 6273, 6276-77 (1991) (“*AM Improvement Order*”); *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993).

specifically rejected calls to reserve access to the band to certain owners or formats, and instead emphasized the need to maximize high quality AM radio service. *AM Improvement Order* at 6306 - 6311. The Commission thus focused its efforts on identifying and migrating to the expanded band those AM stations that were causing heavy interference in the AM band, and even awarded bonus points to stations based on the relative amount of interference they caused. *Id.* at 6309 – 10.

All of these steps demonstrate the Commission’s commitment to enhancing AM radio service. The Commission’s efforts have helped alleviate some of the interference and congestion problems that have compromised AM service quality and hindered the financial stability of AM broadcasting. But it should be apparent that granting Petitioners’ request to introduce more stations, even low power stations, into the already interference-prone AM band, would run counter to the Commission’s effort to clean up and improve the band. Or, as the Commission stated five years ago, “introducing low power stations into any part of the AM spectrum would have a serious negative impact on our efforts to improve the quality of reception in this band.” *LPFM Notice* at 2478. The Commission has made scrupulous efforts to help usher AM radio into the 21st Century, and broadcasters are concerned that establishing LPAM would turn back the clock on this progress.

III. Full Power Radio Stations Provide Community-Responsive Programming

Although the Petition contends that LPAM is needed to increase coverage of local news and current events (LPAM Petition at 15-16), the facts belie these assertions. As NAB has demonstrated in other proceedings, full power broadcasters provide vast amounts of community-responsive programming. It is simply wrong to suggest that new AM service, particularly a

service likely to create significant interference, and undermine long-standing Commission's efforts to improve AM service, is needed to fulfill these needs.

In the Commission's localism proceeding, parties representing at least 2254 radio licensees submitted information on the amount and variety of locally-relevant programming they deliver, the valuable coverage that broadcasters devote to politics and civic discourse, and their efforts to ascertain the needs and interests of their local communities broadcasters.¹² Full power AM stations may determine the needs and interests of their local audiences in different ways, depending on their resources and market size. Large stations may have the funds to conduct sophisticated market surveys and in-house audience tests. Mid-sized and independent stations may rely on simpler methods, such as regular meetings with community leaders and interested audience members, employee participation in community activities, and letters and emails from the public. And the licensees of stations in small markets may ascertain local attitudes by reading the local newspaper and talking to neighbors at the local coffee shop. The overriding point is that, regardless of their size, market or resources, all full power AM stations must review and react to the needs and interests of their local communities as a matter of survival in a competitive marketplace.¹³ As discussed in detail in NAB's comments in the localism proceeding, full power AM radio stations today provide a

¹² Reply Comments of NAB in MM Docket No. 04-233 (filed Jan. 3, 2005).

¹³ As the Commission recognized nearly a quarter century ago, radio stations present programming that serves "the wants and needs of the public," including news and other informational programming, in "response to market forces." *Deregulation of Radio, Report and Order* in BC Docket No. 79-219, 84 FCC 2d 968, 978, 1023 (1981) ("*Radio Deregulation Order*"). In fact, the Commission determined that "marketplace and competitive forces are *more likely* to [result in community-responsive programming] than are regulatory guidelines and procedures." *Id.* at 1023 (emphasis added).

broad mix of entertainment and informational programming to listeners in local communities throughout the country.¹⁴

In addition to providing a wide array of programming, full power radio broadcasters are committed to serving their local communities in other tangible ways. In 2003, the average radio station aired 195 Public Service Announcements (“PSAs”), a combined value of over \$5.6 billion in donated airtime, and 65% of these PSAs pertained to local community issues.¹⁵ Among radio stations that raise funds for charities, charitable causes and needy individuals, the average amount raised per station was \$94,480, totaling over \$955 million.¹⁶

Moreover, full power broadcasters’ support of community organizations is unique. When an AM station partners with a charitable or community organization, the station not only provides money (like other corporate partners), but also a public voice for those organizations. An AM station can help organizations present themselves directly to local citizens, raise their public profile in a unique way, and cement their connections within local communities. An AM broadcaster also can help community and non-profit organizations better leverage their fund raising resources and expertise, their public awareness and their educational efforts. As one broadcaster stated at the Commission’s localism hearing in San Antonio:

Both of our stations also work closely with many different private and public organizations in the area, but, like most broadcasters, we do much more than just cut checks to worthwhile causes. In fact, the most important contributions that broadcasters can make to their community has very little to do with money. We

¹⁴ NAB Comments in MM Docket No. 04-233; Reply Comments of NAB in MM Docket No. 04-233 (Jan. 3, 2005) at 2-25.

¹⁵ See *National Report on Local Broadcasters’ Community Service*, found at <<http://www.broadcastpublicservice.org/Reports/2004Report.pdf>>.

¹⁶ *Id.* at 7.

raise the level of awareness, discussion, and education in our communities. *And we give a voice to local organizations, groups and individual citizens.*¹⁷

Full power AM stations are also involved in their local communities' efforts relating to abducted children and emergency preparedness. AMBER Plan is a voluntary partnership between law-enforcement agencies and broadcasters to activate an urgent bulletin in the most serious child-abduction cases. Today there are 99 local, regional and statewide AMBER Plans across the nation. Since the program began in 1997 in the Dallas, Texas area, the AMBER Plan has been credited with successfully returning 213 children.¹⁸ NAB has also partnered with the U.S. Department of Homeland Security to enlist America's local radio and television stations in a campaign to ensure that people in their communities take the necessary steps to prepare for natural disasters, terrorist attacks, and other threats.¹⁹ These are but a few examples of the on-going steps that AM broadcasters take to deliver informational, community-responsive programming and other services that meet the needs of their local audiences. Full power AM broadcasters, as a matter of survival, must satisfy the interests of their local communities, and it is doubtful that LPAM stations, no matter how well-intentioned, could come close to replicating or even emulating these efforts. Given the vital role of full power AM stations in delivering these and other types of community-responsive programming to their listeners, it could be arbitrary and capricious for the Commission to insert a new low power service in the AM band that could degrade existing services.

¹⁷ Statement of Jerry T. Hanszen, Owner and General Manager, KGAS (Carthage, TX) and KMHT (Marshall, TX) (Jan. 28, 2004, San Antonio, TX) (emphasis added).

¹⁸ See <<http://www.ncmec.org/missingkids>> (last visited Aug. 22, 2005).

¹⁹ *Are You Ready? A Step-by-Step Emergency Preparedness Guidebook to Prepare Your Local Community*, found at <http://www.nab.org/publicservice/Ready.asp>.

IV. LPAM Would Exacerbate Existing Competitive Threats to AM Broadcasting and Complicate the Digital Radio Transition

Finally, broadcasters are concerned that any attempt to make room in the AM band for low power services could have the unintended consequence of hampering the ability of AM stations to provide the quality service their listeners rely on, especially in smaller markets. Thus, rather than improve service to the public, addition of LPAM service could very well degrade the service.

AM stations face intense and expanding direct competition from satellite radio services and Internet streaming, as well as from an expanding number of competitive radio and television stations, satellite and cable television providers, video sales, rentals, and on-demand services, digital video recorders, and video games.²⁰ As established above, inserting low power stations in the AM band could cause substantial interference to neighboring full power AM stations, diminishing AM service quality, and the ability of AM broadcasters to respond to these competitive threats. NAB requests that the Commission carefully consider the impact of introducing LPAM stations on the future of broadcasting as a competitive medium.

It would also be unwise to introduce LPAM stations at this time because the transition to digital radio is just getting underway. The authorization of In Band On Channel (IBOC) digital broadcasting on the AM band raises additional concerns that weigh against the establishment of a low power AM service. Interference created by introduction more stations to the AM band, even low power stations, has the significant

²⁰ See Reply Comments of NAB in MM Docket No. 04-233 (Jan. 3, 2005) at 2-25; Veronis Suhler Stevenson, *Communications Industry Forecast 2005-2009* (19th ed. 2005), at 275-276; JupiterMedia Press Release, *Online Advertising Market to Reach \$18.9 Billion by 2010; Search Advertising Revenue to Surpass Display* (Aug. 15, 2005), available at <<http://www.jupitermedia.com/corporate/releases/05.08.15-newjupresearch2.html>>.

potential to cripple the transition of the radio industry to digital before the transition has a chance to take hold. It is vitally important that AM and FM broadcasters have the ability to roll out digital service at the same time. Any roadblocks along the way for AM could push receiver manufacturers to rethink product development, thereby stalling consumers' opportunity to take advantage of the benefits that digital broadcasting can offer.

IBOC technology for AM broadcasting will provide near-FM quality sound and exciting new data services. The ability of licensees to replicate their existing service area coverage is dependent upon the interference caused to their facilities. IBOC technology works error-free only within existing interference-free analog service areas of stations. Additional signals on the AM band will impact stations' interference-free coverage and thereby reduce their digital coverage area. Thus, it would be premature for the Commission to establish LPAM at this time without also giving careful consideration to the future of digital AM radio broadcasting.

V. Conclusion

As a general matter, the LPAM Petition never sufficiently explains why LPAM is warranted, or more specifically, why LPAM is any more warranted now than five years ago when the Commission previously rejected a similar request. Moreover, the Petition lacks evidence or analysis to demonstrate the technical feasibility of LPAM, such as how LPAM stations could be introduced without causing harmful interference to AM stations, and it would likely undermine the Commission's efforts to revitalize the AM band and the public service

programming being offered. Accordingly, NAB respectfully requests that the Commission dismiss the LPAM Petition.

Respectfully submitted,

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Handwritten signature of Marsha J. MacBride in cursive script.

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